

St. Regis Mohawk Tribal Court

Rita Cole,)	
Appellant)	DECISION AND ORDER
)	
-V-)	Case No.: 12-LND-00001
)	
Paul Thompson,)	
Appellee)	

Procedural History

On January 17, 2012 Rita Cole filed an appeal of a Land Dispute Tribunal decision dated December 30, 2011.

A Twenty Day Civil Summons was issued to Rita Cole on January 18th, 2012 to accompany the Notice of Appeal. A Notice of Appearance by Attorney Lorraine M. White for Paul O. Thompson was filed with the Court on February 10, 2012. The Appellant, Paul Thompson, filed an answer with the Court on February 10, 2012. A Proof of Service was filed with the Court on February 10th, 2012 stating that Defendant's Answer was served upon Appellant Rita Cole.

On May 3, 2012 a Notice of Pre-Trial Conference was sent to both parties in the matter with the Conference to be held on May 15, 2012.

On May 24, 2012 a letter from Chief Judge Peter J. Herne was sent to all parties, stating that on May 15, 2012 both parties in the matter at bar asked for an abeyance until another case that may have an effect on this matter be settled, at which time the Court would take this up again. That case was *LaFrance v Cole 12-LND-00005* which this Court decided by the Court on May 12th, 2015.

Factual Background

On December 11, 1951 Mary Sears sold Theodore and Carrie LaFrance a parcel of land consisting of four acre(s) more or less with boundaries as follows: On the North by Raquette Point Road, On the South by Noah LaFrance, On the West by Lawrence White, On the East by James Thompson. *See*, Record 12/11/51 Land Transaction Mary Sears to Theodore and Carrie LaFrance.

An Affidavit by Margaret Connors dated February 6, 1961 stated that she is the owner of approximately 10 acre(s) of land bounded by the Raquette River on South, on East by Loran Bero property, on North by Mr. and Mrs. James Thompson Sr., and on west by a road now belonging to "said payer" bounded by Mrs. Noah LaFrance. *See*, Record 2/6/61 Margaret Connors Affidavit.

Next, in a document signed by Thomas Laughing, Margaret Connors, Mary Bero, Newton LaFrance, and Percy Thompson on June 13, 1968, each agreed to release a strip of land for the purpose of having a public road made and maintained by New York State. *See*, Record 6/13/68

Public Road Agreement. This is adjacent to, and touches upon, the property at issue in the case at bar.

On June 13, 1979 Theodore and Carrie LaFrance sold four acre(s) of land to John J. Cole and Rita Cole for the amount of \$3,000. *See*, Record 6/13/79 Land Sale Agreement. This is the parcel of land that Theodore and Carrie LaFrance had purchased from Mary Sears in 1951.

On July 3, 1982 a note stating that John and Rita Cole made final payment to Theodore and Carrie LaFrance for land purchased is written. This note also states that the land is paid in full, and that there is a house on it owned by Newton Boots LaFrance and that an agreement will be reached between owner of house and the Cole's. *See*, Record 7/3/82 Note Regarding Final Payment by John and Rita Cole to Theodore and Carrie LaFrance.

The Court notes that in *LaFrance v Cole 12-LND-00005*, we found regarding a right-of-way which was at issue in that matter: "While the Court recognizes the ownership of the Coles for Lot #31, a right-of-way is not extinguished when property is sold from one party to another. In this case the right-of-way that was in existence when the children of Noah and Louise LaFrance decided to establish it, and was still in place when the Coles purchased the Theodore and Carrie LaFrance's parcel. The Court finds that the right-of-way that was in existence in 1973 (as created by the owners in 1973) is STILL in existence today and that the Coles could not solely extinguish that right-of-way." *See*, *LaFrance v Cole 12-LND-00005*.

On July 3, 1982 an SRMT deed was issued to John and Rita Cole for Lot #31 which consists of 4 acre(s). *See*, Record 7/3/82 SRMT Deed Lot #31.

Christine Connors¹ sold Lot #30 containing approximately 3 acres to Paul and Hilda Thompson on January 6, 1995 and an SRMT Use and Occupancy Deed was issued to Paul and Hilda Thompson. *See*, Record 1/6/95 SRMT Use and Occupancy Deed for Lot #30. This parcel is adjacent to the transactions involving Theodore LaFrance, Newton LaFrance Sr., and John and Rita Cole. *See*, *LaFrance v Cole 12-LND-00005*.

On March 12, 1995 A Property Certification stated that Newton LaFrance Jr. is now the owner of the late Newton LaFrance Sr. estate. *See*, Record 3/12/95 Property Certification.

Also in the record is a Haynes and Smith invoice to Paul and Hilda Thompson for a field survey, deed interpretations, and research for surveying a 3.79 acre parcel of land dated November 27, 1995. *See*, Record Haynes and Smith Invoice 11/27/95. This appears to be the property purchase made of Christine Connors.

On July 27th, 2011 Paul Thompson filed a complaint with the St. Regis Mohawk Land Dispute Tribunal concerning Lot #30 naming Rita Cole as respondent. *See*, Record Paul Thompson SRMT LDT Complaint 7/27/11. On September 1 and 8, 2011 a Public notice of land dispute was published regarding the land dispute between Paul Thompson and Rita Cole.

On November 9, 2011 the initial hearing before Land Dispute Tribunal regarding Thompson v Cole was held. On December 7, 2011 a final hearing was conducted by the SRMT

¹ Christine appears to have come into possession of the property once owned by Margaret Connors.

LDT regarding Thompson v Cole. On December 30, 2011 a decision was rendered by the SRMT LDT in Thompson v Cole.

Discussion

The Court has been tasked with deciding an appeal filed by the Appellant, Ms. Rita Cole, regarding a boundary dispute between her property, Lot #31, and the property of the Appellee, Mr. Paul Thompson, Lot #30. In her notice of appeal Ms. Rita Cole states that, "I am requesting an appeal because the 1995 survey by Mr. Thompson is based on fraud and deceit. I also believe the Tribunal did not take into consideration that the documents submitted are in fact dated boundaries set by the previous owners of the 1960's, 1970's, and 1980's. The unprofessional behavior of Tribunal members, a conflict of interest between Mr. Thompson and Tribunal members, the mishandling and omission of evidence, and the timely submission of the complainants evidence." See, Notice of Appeal January 17th, 2012.

In deciding this case, the SRMT LDT determined:

1. Original Land/Survey marker at the river's edge has been removed.
2. Early aerial photographs submitted by both parties indicate dirt road (Indian Village Road Extension) to be straight from Racquette Point Road to Racquette River.
3. Survey's submitted by both parties indicate property boundary followed straight from middle of Indian Village Road to the Racquette River.
4. Rita Cole's deed was not accurate when indicating measurements between Lot #30 and Lot #31.
5. Furthermore, the Tribunal has agreed to preserve the Tribal Use & Occupancy Deed to Lot #30 sold from Christina Mae Connors to Paul and Hilda Thompson as described in Land Survey conducted November 27th, 1995.
6. Rita Cole's deed for Lot #31 is to be amended to accurately reflect the boundary between Lot #30 and Lot #31, corresponding to the said Land Survey conducted November 27th, 1995 by Haynes and Smith Associates.

The Appellant, Ms. Rita Cole alleges that the 1995 survey conducted by Haynes and Smith is inaccurate and that it is "fraudulent and an instrument of deceit." *Id.* As the Court has previously found, a "surveyor's utility is only going to be as good as what is 'placed in their hands'". See, *LaFrance v Cole 12-LND-00005 and Hathaway v Thomas 12-LND-00007*. In the matter at bar the Court notes that when the purchase was made by Paul Thompson from Christine Connors for Lot #30, there were no specific measurements given for the parcel of property known as Lot #30, only the names of property owners who bounded Lot #30. The Appellant alleges that the Appellee, Mr. Thompson, failed to present any valid measurements, regarding Lot #30.

Ms. Rita Cole also alleges in her notice of appeal that there was a conflict of interest between the Appellee, Mr. Paul Thompson, and some of the SRMT LDT members. Ms. Cole stated, "When Mr. Thompson entered the room, he immediately approached Minerva White and Rowena General and proceeded to hug each of them. He did not greet anyone else in the room with a handshake or otherwise. This demonstrates the existence of a close relationship. We know Mr. Thompson was a former chief of the St. Regis Mohawk Tribe and has numerous business and political acquaintances. The actions I witnessed immediately made me feel that any decision made would be tainted." *Id.*

Analysis

The Court has reviewed the record before it regarding the Appellant's claim that the boundary descriptions for the Appellee's property, Lot #30 are inaccurate and intrude onto her property Lot #31. We can begin by noting that when the Appellee, Mr. Paul Thompson, purchased Lot #30 from Ms. Christine Connors, there were no measurements given to identify the boundaries of Lot #30. The exact deed language provides "All that tract or parcel of 1/2 land containing approximately 3 acres, **more or less**, situated on the Saint Regis Mohawk Indian Reservation, Town of Bombay, County of Franklin and that State of New York, briefly described as follows: On the South by the Racquette River; On the East by Louis (Jack) Tarbell, Lot #29; On the North by the Indian Village Road; On the West by land of John Cole, Lot #31." **[our emphasis]** See, Lot #30 Deed 1/6/95. There were simply names of neighboring property owners and an estimation of the size of Lot #30.

We can also note that in the record of this case, as well as the case of *LaFrance v Cole* 12-LND-00005, we have determined what the boundaries of the Appellant's property are. In *LaFrance* we had in fact reviewed and made a finding with respect to the Appellant's boundaries wherein: "When using the Appellee's deed for Lot #31 to identify the boundaries of this parcel, the property lines are clearly identifiable. The easterly boundary for Lot #31 runs parallel to Indian Village Road for a distance of 1194', which is the total distance from north to south that is provided for in the SRMT Deed issued to John and Rita Cole. This also coincides with the description given in the June 13th, 1979 Sale Agreement between Theodore LaFrance and John and Rita Cole. At no point does this easterly boundary cross over into Indian Village Road or anyone other recorded property owner's land." See, *LaFrance v Cole* 12-LND-00005.

The Appellant, Ms. Rita Cole claims that when a survey was completed by Haynes and Smith on behalf of Mr. Paul Thompson for Lot #30, fraud was committed as there were no boundary dimensions given at the time of purchase for a valid survey to be conducted. The Court concurs that a survey executed based simply upon a document with no measurements given, and based upon the direction of a person paying for the survey, could easily result in a flawed instrument. However, we cannot agree that this shows that a fraud was committed. We recognize that without the consultation of neighboring property descriptions, any survey based upon a document with no boundary measurements and based only upon the input of the property owner's boundary measurements is likely to be inaccurate.

Nonetheless, we must note that the property boundary measurements and lines for the Appellant's land (Lot #31), have now been established by the Court. See, *LaFrance v Cole* 12-LND-00005. In that case the Court found that the eastern boundary of Lot #31, owned by the Appellant, Ms. Rita Cole, could not be found to cross over into Indian Village Road. The Court can also now reiterate that at no point does the eastern boundary of Lot #31 (Rita Cole), enter into the property boundary of Lot #30, owned by the Appellee, Mr. Paul Thompson, which was previously owned by Ms. Christine Connors. Further, as we held in *LaFrance* there is a road and

right-of-way separating these properties as was agreed to by the original owners in 1968 and 1973. *See, LaFrance v Cole 12-LND-00005.*

The Court notes that there is a remaining portion of property which measures 172'6"x500' that appears to be the remainder of the estate of Theodore LaFrance. In *LaFrance* we held that case that there was no apparent transaction for this 'neighboring' parcel. Even so, we can note that at no point does this remaining portion of property EVER intrude into Lot #30, owned by the Appellee, Mr. Paul Thompson, as it too is separated by the road and the right-of-way.

Next, as both parties in the matter at bar requested that the Court render a decision in *LaFrance v Cole* before proceeding on this case, we can note that useful information and documentation was developed from *LaFrance*. In particular the Court was able to address the Appellant's argument that modern documentation and boundaries were used which contradict what occurred in the past. The Court in determining the Appellant's boundaries and measurement's in *LaFrance v Cole* used not only the modern map provided by the SRMT GIS department, but also overlaid the measurements determined by the Appellant's own documents onto a map from 1942. Through this means of "settling" the Appellant's boundaries, and determining the placement of the road and the subsequent right-of-way in *LaFrance*, we cannot now find that the Appellee (Mr. Paul Thompson) has intruded upon the Appellant's (Ms. Rita Cole) property.

Our finding in this regard is only further supported by our review of the record here that shows there is no, nor has there ever appeared to have been, an overlap between the properties of the Appellant (Lot #31 Ms. Rita Cole) and the Appellee (Lot #30, Mr. Paul Thompson). Furthermore, based upon our findings in *LaFrance v Cole*, as well as the record of this case, it is apparent to the Court that there was created and has continued to exist a right-of-way and a road dividing these properties. This is particularly true where the Appellant's property was located, with measurements, in the case of *LaFrance v Cole*.

The Appellant's also claims that there was a conflict of interest between the Appellee, Mr. Paul Thompson, and members of the SRMT LDT. We can begin by providing that the Court is guided by the SRMT Judicial Code regarding its obligation to upholding the integrity of the Court, its proceedings, and the avoidance of impropriety in any judicial proceedings. In particular, the SRMT Judicial Code provides, "A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment." *See, SRMT Judicial Code Section 4 (B).* The Court has addressed the issue of conflict of interest involving a Judge of the Tribal Court in a previous land dispute case. *See, White v White 10-LND-00009.* In the Court's decision on conflict of interest in that matter, the Court outlined the standards it uses when deciding whether or not a conflict of interest has occurred or may occur. The Court specifically identified how we are to determine whether or not there is a conflict of interest regarding familial relations:

"In the case at bar, there is what appears to be a controlling federal law, 28 U.S.C. §455 (2010) [Disqualification of Justice, Judge, or Magistrate], which pertains to when a judge must recuses himself from presiding over a case concerning a conflict of interest.

First a judge shall disqualify himself in the following circumstances:

He or his spouse, or a person within the **third degree of relationship** to either of them, or the spouse of such a person:

- I. Is a party to the proceeding, or an officer, director, or trustee of a party;
- II. Is acting as a lawyer in the proceeding;
- III. Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
- IV. Is to the judge's knowledge likely to be a material witness in the proceeding. [Emphasis Added] (*Id* (B)(5)(i)(ii)(iii)(iv))”.

This is the standard that the SRMT Court uses when addressing a concern raised by a party in a case before it that there is an alleged conflict of interest. The Court notes however, that these standards do not appear to be used by the SRMT LDT, and the Court does not know what standard IS used by the SRMT LDT to address a potential conflict of interest.

Furthermore, as we have noted the Court has been called on to decide conflict of interest issues in its land dispute cases. In addition to these cases, the Court also emphasizes open disclosure of facts when deciding cases. Facts which one could make a reasonable inference that a conflict of interest may exist. It has been through this ‘open disclosure’ that any conflict of interest questions have been resolved in SRMT Court.

With respect to the current conflict of interest allegation in the case at bar, we must however distinguish that the SRMT Court’s conflict of interest rules differ from those of the SRMT LDT, as the SRMT LDT is NOT a part of the SRMT Court. We have recognized in other cases before the Court that the Court is held to more exacting standards. *See, Sawyer v Laughing 12-LND-00005, Oakes v Edwards 15-CSEU-00001*. Therefore, in review of this allegation we reviewed the ‘record’ anew with respect to this issue, and we carefully scrutinized the evidence submitted to the LDT with respect to the conflict of interest, and as to the merits of the claim.

After this review we see nothing presented by the Appellant to substantiate her claim that there was a conflict of interest between Mr. Paul Thompson and any member of the SRMT LDT. Furthermore, in this review we also scrutinized the SRMT LDT findings against the merits of the case at bar. As such, we again conclude that although some boundaries may contain vague language, it is clear that when boundaries have been determined (*LaFrance v Cole*), they clearly can be utilized to determine if a neighboring property is intruding upon another property (here Mr. Paul Thompson Lot #30 upon Ms. Rita Cole Lot #31). Here, we can find no intrusion particularly when the parties property have been, and continue to be, separated by a road and a right-of-way.

Conclusion

The Court finds that the property known as Lot #30, owned by Mr. Paul Thompson does NOT intrude into the property known as Lot #31, owned by the Appellant, Ms. Rita Cole. The Court also finds that there is no factual basis that established a conflict of interest between the Appellant, Mr. Paul Thompson, and any of the SRMT LDT members, and that after a careful review of the record, this did not affect the merits of the case at bar. Wherefore, pursuant to the SRMT LDRO this is the ‘final decision’ in this matter.

Signed by my hand this 14th day of May 2015



Peter J. Herne, Chief Judge St. Regis Mohawk Tribal Court

